

Response to Comments T1 Sanitary Septic System General Permit NJ0130281

Notice of the Department's intent to renew this permit was Public Noticed in the DEP Bulletin on February 27, 2008, The Star Ledger on February 27, 2008, the Press of Atlantic City on February 25, 2008 and the Courier Post on February 23, 2008.

Comments were received from the following interested persons:

- (1) Philo Chris Chapman, Vice President of Chapman Manufactured Housing, a current permittee.
- (2) Nancy Viviano, Tomaron, Inc. t/a Indian Rock, a current permittee.
- (3) Donald Flett, P.E., Flett Associates, a consultant submitting on behalf of 2 current permittees: Cedar Glen Homes and Luxury Mobile Home Park.
- (4) Joan Fittz, Executive Director, New Jersey Manufactured Housing Association (NJMHA).

Note: commenter #2 and commenter #4 have substantially similar remarks and have been combined.

The commenter's specific questions are identified by the numbers above along with the Department responses below:

Topic: Comment Period

1. Comment (2, 4): "Consistent with the directions in the Public Notice a request was made during the comment period for an appointment to review the administrative record. The administrative record was not made available for review during the comment period. Please accept this letter as a request for an appointment to review the administrative record. Please accept this comment letter as a restatement of that request for an appointment to review the administrative record file."

Department Response: The administrative record consists of the existing permit (last revised in 2007); 2/28/08 proposed T1 permit renewal, prior versions and the regulations. The permit was fully available at DEP and reviewable during the comment period. The misunderstanding occurred because a telephone message was forwarded to a staff member who was out of the office. As a result of the staff member being temporarily unavailable and that the caller did not follow up the next business day, there was a delay in responding to the telephone request. The requester was from the firm of Tyler and Carmeli, who ultimately performed a review of said files. This firm represents the NJMHA who separately submitted comments on topics of concern prior to the end of the comment period. For the above stated reasons, the comment period was not extended as the files were available and reviewable by the public.

2. Comment (3): "Management [of Cedar Glen Homes] contacted NJDEP concerning the permit renewal. They were advised that the permit would be automatically renewed. They were not informed that they must comment on the permit especially any proposed changes."

Department Response: In the correspondence and notice sent to all permittees, the Department sent instructions to submit comments and stated that the permit has an automatic renewal provision. The cover letter included contact information so that interested parties may call the Department to ask questions.

3. Comment (3): "Management [of Cedar Glen Homes] was under the impression that the comment period was to end on or about April 27, 2008. When we were informed [by our engineer] late in the day on Friday, March 28, 2008, that the comment period was to end that day, the board was unable to discuss any reaction or comment, particularly on the proposed changes. As a result of this, Cedar Glen Homes needs additional time to review and evaluate the implications of the proposed changes in the permit conditions, especially relating to cesspools and to review with board members."

Department Response: The Department sent a letter to all permittees which stated that the 30 day comment period was to begin "February 27, 2008 and close on or about March 27, 2008." The Department contends that since permittees were notified by letter and because the date was public noticed in the DEP Bulletin and three (3) newspapers, proper notification was sent and the comment period was not extended.

4. Comment (3): "The permit renewal package was sent to an old mailing address and was not received by the new manager [of Luxury MHP]. After requesting it, the permit package was e-mailed to me. I received it late on Friday March 28, 2008 and forwarded it to the new manager. She was not able to review the permit package at such short notice and therefore requests an extension of 30 days."

Department Response: The Department made every effort to mail notices and attempted to locate alternate addresses upon becoming aware that a mailing address was no longer valid. In this particular instance, the engineer contacted NJDEP on 3/28/2008

and he was e-mailed requested documentation within an hour of the phone call. The engineer was further instructed to submit comments by e-mail or fax to our office so that comments were received in a timely fashion. Clarification comments were submitted subsequently and are included below under the topic of cesspool elimination. The NJPDES rules require that permittees make sure the Department has up-to-date contact information to prevent delays in receiving notifications. The permittee may not have been fully aware of this requirement and we will insert clarification to this effect in the final permit under "Notifying the Department" (requirement is listed in N.J.A.C. 7:14A-2.11(f), 6.10(e)2 and (f)3 and 6.13(d)9.i.).

Topic: Cesspool Elimination:

1. Comment (3): "We are concerned about the interpretation of the proposed change in permit conditions on page 2 of 4 of the Fact Sheet concerning cesspools. In the limited time available, it was determined, based upon my previous investigation of some of the sewage disposal systems, that Luxury MHP or Cedar Glen does not have cesspools. They generally have concrete septic tanks for solids removal prior to discharge for subsurface disposal. Therefore they do not have to replace any portion of their systems. I confirmed by discussion this interpretation that a cesspool is a leach pit that receives raw sewage directly from the residence without a solid imperforated septic tank preceding this unit. [*Luxury MHP's and Cedar Glen's*] renewal of the permit is conditioned specifically in this understanding relative to replacement or upgrade of these systems."

Department Response: The commenter makes a good point and the definition of a cesspool has been added to the final permit. The commenter is correct that if the system in question is not a cesspool, the provision in the permit to mandate replacement would not be applicable. If a facility does not have a cesspool then the provision to replace them will not apply. However, all other provisions of the permit do apply.

2. Clarification Comments submitted by commenter (3): "It is our understanding, based upon discussions [with NJDEP] that a subsurface disposal structure is not a cesspool and therefore not subject to replacement or modification [within the next 3 years] *if* a solid walled septic tank is installed between the structure and the source of sewage. This interpretation is supported by the following definitions from CFR 144-146.3 [the Federal Regulations]:

Cesspool means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

Drywell means a well, other than an improved sinkhole or subsurface fluid distribution system completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

Since the definition of cesspool involves receiving of untreated sanitary waste, the incorporation of a septic tank upstream of the [disposal] structure precludes it from being a cesspool.

Based upon my discussions with site personnel, my inspections of a number of said systems, that the site does not have cesspools as defined above and therefore do not need to be replaced or modified as discussed in the proposed changes to the [T1] NJPDES permit. Acceptance of the renewal conditions of the permit is specifically conditioned on this understanding."

Department response: It is common that the term cesspool, seepage pit and drywell are interchanged causing confusion. For clarification, a definition of "cesspool" has been added to the final permit as stated previously.

3. Comment (1): "It is the request of Chapman Manufactured Housing to understand the specific definition of cesspools. Second, a 3 year timetable is a very aggressive change without any means of financing or funding such changes."

Department Response: Please review comments under the topic "cesspool elimination" above. A definition of cesspool has been added to the permit for clarification purposes. For those facilities that have small cesspools, the Department maintains that the elimination of these is beneficial to public health and the environment. However, the Department does recognize that it would be difficult for some facilities to close all cesspools within the three years. Therefore, the permit language at C.5.a. has been changed to require a more flexible schedule. Within two years following the Effective Date Permit Authorization, the permittee shall submit a cesspool closure plan that specifies the number of cesspools and a schedule to close them by the end of the 5 year permit cycle. The permittee will have until the end of the permit cycle to abandon or replace their small cesspools prior to the Expiration Date of the permit. C.5.a will read as follows:

"If the regulated facility has small capacity cesspools (less than or equal to 2,000 gallons per day), privies, or outhouses, the permittee shall produce a closure plan to abandon and replace these methods of sewage disposal with systems that do not result in an increase in the volume of sanitary sewage. The

closure plan shall be implemented prior to the Expiration Date of this permit. The permittee shall submit this plan to the Department within 2 years after the Effective Date of Permit Authorization (EDPA)."

4. Comment (2, 4): "When initially promulgated, this general permit provided for the continued existence of the homes and communities served by the systems from which discharge is authorized under the permit. This permit was recognized as a solution that allowed continued home ownership, promoted affordable housing and provided DEP with the ability to inspect and regulate these existing systems. The homes and communities are a major source of affordable housing and if the permit is adopted requiring the elimination of cesspools, these communities will need to be closed. For this reason the permit should be readopted without modifications. Also, no environmental need for modification has been identified by NJDEP. We believe that these systems as long as they are functioning as designed, they should not be replaced. If readopted without modification, the permit provides DEP with the ability to monitor these existing systems and protect the public health."

Department response: The Department is cognizant of the need to provide affordable housing. However, the Department has a responsibility to ensure that public health and environmental protection are ensured. People who live in affordable housing should not have substandard sewage disposal facilities. By this permit, the Department is insuring that public health and environmental protection is afforded to all citizens.

The 1953 version of the septic code (N.J.A.C. 7:9A) defined a septic system as having a septic tank along with a disposal field and restricted the construction of new cesspools. Effective July 1, 1978, N.J.A.C. 7:9A specifically banned the construction of new cesspools. By these restrictions in the 1953 and 1978 versions of N.J.A.C. 7:9A, it is common knowledge that cesspools are a direct injection of untreated sewage into the ground. Untreated sewage is a recognized source of pollutants and pathogens. Cesspools are a public health hazard that the DEP wants to eliminate. Please also review the previous comments above under the topic of "cesspool elimination".

Topic: Fact sheet

1. Comment (1): "It is the request of Chapman Manufactured Housing that those facilities that should be regulated but are not, first be identified and subject to the conditions and regulations of a T1 general permit. It is the obligation of the Department of Environmental Protection to apply the law to all individuals or corporations equally. To subject those facilities that are regulated to modifications and changes to the effluent systems that are operating and not to others is arbitrary and capricious. While it may not be reasonable to have 100% of facilities that should be regulated identified, even the Department of Environmental Protection is conceding the fact that many facilities are not identified."

Department Response: The Department agrees that all facilities that are required to have a NJPDES permit must obtain them. Over the past several years, this Department has been working with local Health Departments, and other entities, to identify operating facilities that do not have the required NJPDES permit and direct them to file an application, if needed. All leads from the public and the Health Departments are followed up with a site visit. This approach has proven to be successful. Presently, there are approximately 630 facilities with an active T1 permit. If anyone is aware of a site that should have a permit, please contact NJDEP by calling 1-877-WARNDEP.

2. Comment (1): "The basic idea of lumping facilities that are regulated by the T1 permit together with the primary guideline being above 2000 gallons a day benchmark is unrealistic. A 150 unit mobile home park is substantially different than a strip mall. To use the same guidelines for all such facilities has unintentional consequences."

"For instance, a strip mall with a single point of entry sewage disposal system could reasonably be expected to make changes to such a system. A mobile home park spread out over a large land area could have changes [imposed] to the T1 permit cost more than the entire site may be worth. Such changes could prompt drastic action on behalf of owners that would negatively impact individual homeowners on the State of New Jersey."

Department Response: The Department created this general permit to regulate pre-existing facilities with a design flow of greater than 2,000 gpd. NJDEP agrees that the type of wastewater generation is different at different types of facilities.

The Department concurs that, in some instances, multiple small systems at the same facility needing replacement at the same time could be more costly to replace as individual systems than a single larger system with the same overall design flow. This is why facility owners need to look at their overall plot plan to see if systems can be clustered and/or utilize different types of alternative disposal fields to overcome various site limitations. However, the permit language at C.5.a. is being changed to require, two years following the Effective Date Permit Authorization, the submittal of a cesspool closure plan. The permittees will have until the end of the 5 year permit cycle to abandon or replace their small cesspools prior to the Expiration Date of the permit (see Comment 3).

Topic: Plot plan

1. Comment (2, 4): “As recognized in the permit, the systems authorized to discharge are existing. Accordingly, there may not be a plot plan available with the information required at condition B.4.b. This condition should be eliminated or only require to the extent that the information is available.”

Department Response: The requirement to have a plot plan is in the current NJPDES permit and NJPDES regulations at N.J.A.C. 7:14 7.9. The Department contends that a permittee needs a site plan to know the locations of the systems subject to regular inspections. This same site plan is used during DEP’s annual inspections. If there is no plot plan or an outdated one, inspections cannot be reasonably and effectively conducted by the permittee as required by the permit. NJDEP believes these requirements to be reasonable to facilitate the identification of all sanitary subsurface disposal locations that exist and the requirement will remain in the permit with minor changes for clarification purposes.

Topic: Frequent Pumping of Systems

1. Comment (2, 4): “No scientific support is provided for the conclusion that a septic tank which requires pumping more than once a year reflects a system that is not functioning properly. The entire note should be eliminated. If DEP has facts to support this conclusion, the public needs to be provided with that information and offered an opportunity to comment. The DEP is required to have a basis for the requirements that it proposes.”

Department Response: The requirement in the permit is not a new permit condition. The Department understands that some permittees are very proactive and pump their systems on a scheduled basis and not because the system is malfunctioning. Some permittees have portions of their systems like grease traps, which need to be cleaned regularly to prevent system clogging. If the frequent pumping is a common practice but unnecessary, the permittee may be able to save money by increasing the length between pumping events. Septic tank pumping should be done based on the type of use, population utilizing the system, and sizing of the septic tanks. Please view the following referenced website for additional detail: http://www.water.rutgers.edu/Fact_Sheets/fs840.pdf

Pump-outs are necessary to prevent the possibility of tanks overtopping, disposal field breakouts, or sewage backup into a building. The purpose of this permit is to maintain all existing systems in good working order. Frequent pumping can mean an unidentified problem with the disposal system. If septic tanks must be pumped more than once per year, the system needs to be evaluated by a licensed professional to determine the cause of the problem. The requirement will remain in the permit.

Changes to the permit based upon comments submitted during public comment period:

Addition of a definition for “cesspool”. The following definition was taken from N.J.A.C. 7:9A-2.1 and added to the permit.

“Cesspool” for the purposes of this permit, means “a covered pit with open jointed lining into which untreated sewage is discharged, the liquid portion of which is disposed of by leaching into the surrounding soil, the solids or sludge being retained within the pit.”

The following language regarding small capacity cesspools has been amended at C.5. as follows: “If the regulated facility has small capacity cesspools (less than or equal to 2,000 gallons per day), privies, or outhouses, the permittee shall produce a closure plan to abandon and replace these methods of sewage disposal with systems that do not result in an increase in the volume of sanitary sewage. The closure plan shall be implemented prior to the expiration date of this permit. The permittee shall submit this plan to the Department within 2 years after the Effective Date of Permit Authorization (EDPA).”

Clarification regarding plot plan, the language in the draft permit B.4.b.i. was changed as follows: “The most up to date plot plan must be maintained onsite at all times. Locations of all septic tanks and disposal areas must be detailed on the plot plan and should include pump out locations. Whenever septic systems are relocated, the plot plan must be updated once the construction of the new or updated septic systems is complete. This is consistent with N.J.A.C. 7:14A-7.9.”

Notification of Changes, Including Address Change B.5.b. “Permittees are required to advise the Department of any changes, missing or incorrect information, including address changes per N.J.A.C. 7:14A-2.11(f);6.10(e)2 & (f)3; and 7:14A-6.13(d)9.i.”

Renumbering B.5.b.:

B.5.b. in the Draft permit, which began “Certain activities or changes..”, has been renumbered to B.5.c.

Department Initiated Changes:

The language regarding large capacity cesspools in C.6. was moved to C.5.b.i. and modified for clarification and consistency as follows:

“Large capacity cesspool(s) with a design flow greater than 2000 gallons per day shall be closed in accordance with the requirements of N.J.A.C. 7:14A-8.4(a)3i. These cesspools should have been closed by April 5, 2005. Any permittees with these types of sewage disposal remaining after this date must submit a closure plan. The closure plan must include an estimated timeframe for when the system is replaced with an adequate individual sewage disposal system.” Be advised that the maximum timeframe to submit and implement a closure plan for the large capacity cesspools is **not** the same as the language of the small capacity cesspools.

The language under C.4.d. was moved to C.4.a.iv. and modified for clarification as follows: “The permittee may use any sewage storage or disposal method subject to all NJDEP approvals.”

The language in B.4.e. was modified for clarification as follows: “The permittee shall maintain a written record of the septic tank inspection and pumping events (including the locations and volume removed) for each septic system as required above. All of these records are to be maintained for a 5 year period. These records shall be made available to Department personnel upon request.”

The language in the final permit at B.5.c.i. was amended to read as follows: "If your facility is planning to alter the system for any reason other than to conduct an "in-kind" repair, the permittee will need to apply to the Department for a Treatment Works Approval (TWA)." The Treatment Works approval process associated with a NJPDES permit is not constrained by the limitations of N.J.A.C. 7:9A. Therefore, alterations and repairs that are conducted under this permit may employ a variety of technical solutions to improve the quality of the discharge and the functionality of the system that are not afforded by N.J.A.C. 7:9A. Permittees and their consultants are advised to discuss these issues with Department staff to find out what solutions and technologies are available.

The first sentence in the draft permit C.1. was moved to B.3.a. and clarified as follows: “The operation of an individual subsurface sewage disposal system shall, at no time, create an unpermitted discharge to any ground or surface waters of the state.

The remaining portions of Section C were reworded for clarification.

Copies of the commenter’s submittals are available in the administrative record file of this NJPDES permit and available for review at NJDEP.